

MAINE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
January 29, 2015  
Gambling Control Board Conference Room  
Department of Public Safety Building  
45 Commerce Drive, Augusta, Maine

Commission Members Present: Barbara Dresser, Chair, Gary Reed and William McFarland.  
Commissioners Absent: Dirk Duncan

Staff Members Present: Ron Guay, AAG, Henry Jackson, Miles Greenleaf, and Carol Gauthier.

ADJUDICATORY HEARINGS:

1. Commissioner Dresser handed the meeting over to Attorney Guay who would be the hearing officer for today. Attorney Guay asked for a roll call of people present for the adjudicatory hearings. Earlon Eugley and Valerie Grondin were both absent. Jon Chenard, James Smallwood, Janet Davis and Joseph Douglas were present. He asked Mr. Jackson if there were any request for continuance on the absentees. Mr. Jackson stated that he talked with Mr. Eugley and Ms. Grondin and offered Mr. Eugley the same agreement for those that violated the permitted medication program in 2014. They both agreed. Mr. Eugley agreed to a continuance the matter until September 1<sup>st</sup> with the understanding that if he has a violation of Chapter 11 between now and September 1 that this matter would be brought back before the Commission for a hearing. Ms. Grondin he offered the same except he is going with July 1<sup>st</sup>. The reason he is giving Mr. Eugley until September 1<sup>st</sup> is because the concentration was extremely high. He also stated that the point would be that by the dates he indicated if no violations have occurred then these two cases would be dismissed. Attorney Guay stated that procedurally the hearing on complaint number 2014 MSHRC 0025 shall be continued until the September 2015 meeting of the Commission with the understanding that if there are no additional violations or allegations of violations prior to the September 2015 meeting this matter will be dismissed. It is still an active matter. Valerie Grondin, complaint number 2014 MSHRC 0031 the state has requested a continuance until the July 2015 meeting with the understanding if there are no additional violations or allegations of violations that the complaint will be dismissed at the July 2015 meeting. He polled the Commissioners and they have informally affirmed their consent so the continuance on Mr. Eugley and Ms. Grondin are given. He asked Mr. Jackson if he has any prehearing recommendations on the other cases. Mr. Jackson stated that he had talked with Mr. Chenard regarding complaint numbers 2014 MSHRC 0029 and 0030 and he wishes to talk to the Commission and stipulate to the facts. Mr. Chenard stated that he has not stipulated to the facts. Attorney Guay stated that he would advise the Commissioners that Mr. Jackson was speaking in a prehearing context here and the fact that there were settlement negotiations and in lieu of stipulation on the violations there would have been consent agreement that does not mean that Mr. Chenard has stipulated to the violation. Mr. Chenard has not stipulated to the facts. Attorney Guay asked if there were any other matters from a prehearing potential disposition. He asked Mr. Chenard if he admitted to the fact that the horse Fox Valley Shannon had a blood sample containing Guaifenesin on October 24, 2014 at Scarborough Downs. Mr. Chenard stated yes. Attorney Guay asked if he also admitted to the fact that the horse Ladyofcastlebrook had a blood sample containing Guaifenesin on October 26, 2014 at Scarborough Downs. Mr. Chenard stated yes. Attorney Guay asked the Commissioners if they had any knowledge of this matter that would prevent them from being fair in this case. Commissioners responded with no they do not. He asked if any Commissioners have any personal relationship with the licensee that would prevent them from fair in this matter. The Commissioners

responded that they do not. He asked Mr. Jackson if he wanted to put the exhibits in. Mr. Jackson stated no, he does not. Mr. Chenard has stipulated to the facts. He also stated that the record will show that Mr. Chenard is the trainer of record of the horses Fox Valley Shannon and Ladyofcastlebrook. Attorney Guay asked Mr. Chenard if he admits to being the trainer of record. Mr. Chenard stated yes he does. He also provided testimony. Attorney Guay asked the Commissioners if they had any questions for Mr. Chenard. Commissioner McFarland stated that Mr. Chenard had explained himself quite well. Commissioner Dresser agreed with Commissioner McFarland. She also stated that they have guidelines within which they have to act. The proposal that Mr. Jackson had gave him for the one violation definitely falls within the first offense. She asked Mr. Jackson if he was comfortable with the proposal that he made. Mr. Jackson stated that he would like to revise that. He would like the Commission to consider both penalties as one violation they occurred within two days of each other. He would recommend the minimum penalty for that which would be a 30 day suspension of all licenses, a \$250 fine and the return of both purses. He would suspend the suspension of both horses. The suspension would start March 28, 2015. Commissioner Dresser asked for a motion. Commissioner McFarland made a motion that they accept the described penalty that was last presented by Mr. Jackson with respect to these two violations. Commissioner Reed seconded. Commissioner Dresser asked for the vote. Vote 3-0. Attorney Guay asked for a violation in that motion. Commissioner Dresser stated yes.

2. Attorney Guay was the hearing officer regarding complaint number 2014 MSHRC 0033 Mr. James Smallwood. Mr. Smallwood was present for his hearing. Mr. Jackson asked Mr. Smallwood if he would stipulate to the fact that he was the trainer of record. Mr. Smallwood stated yes. He also stipulated to the fact that a blood sample obtained from Alitlbitrocknroll following the First (1<sup>st</sup>) Qualifying Race on August 16, 2014 at Scarborough Downs disclosed the presence of Clenbuterol, a Class III Drug. Mr. Jackson stated that he would offer the same penalty he offered Ms. Davis for the same drug. A 90 day suspension with all but 30 days suspended. The suspension would begin on March 28 until April 27. A \$500 fine and the horse would be suspended for 30 days with that suspension being set aside. Mr. Smallwood provided testimony. There were no questions from the Commission members regarding Mr. Smallwood's testimony. The Commission deliberated. Commissioner Reed stated that it was a misjudgment of time. Commissioner McFarland concurred with Commissioner Reed. Commissioner Dresser asked for a motion. Commissioner Reed made a motion to a 90 day suspension with all but 30 days suspended, \$500 fine. Commissioner Dresser asked Commissioner Reed just to be clear if he also was including the suspension of the horse be set aside and that the finding of fact for the violation had been stipulated. Commissioner Reed stated yes. Commissioner McFarland seconded the motion. Commissioner Dresser asked for the vote. Vote 3-0.
3. Mr. Jackson stated complaint number 2014 MSHRC 0034 Ms. Davis. He would be offering Ms. Davis a minimum penalty for the Class III Drug violation Clenbuterol. We would file the Phenylbutazone until September 1<sup>st</sup> and if there were any further violations between now and the September meeting of 2015 that the Phenylbutazone positive would be heard. He is offering the minimum of a 90 day suspension with all but 30 days suspended, \$500 fine and return of the purse. Attorney Guay stated that there is an allegation of one violation. Mr. Jackson stated that the Phenylbutazone Class IV drug would be continued. Attorney Guay stated that we have one complaint on two different drugs. He asked Mr. Jackson if she would stipulate to both. Mr. Jackson stated yes. Attorney Guay stated that would need to be approved by the Commissioners. He turned the meeting over to the Commission chair. Commissioner Dresser stated that the proposal for a consent order would be for the Clenbuterol which is a Class III substance, 90 days suspension with all but 30 days suspended, \$500 fine and return of purse, but we need to suspend

the horse and setting aside the suspension just to be consistent. Are there any comments. The Bute positive which is a Class IV drug would be continued through September 1<sup>st</sup> and if there are no new violations between now and then the Bute violation would be dismissed at our September meeting. Attorney Guay stated because that is a consent order you can actually have it expire on September 1<sup>st</sup>. Commissioner Dresser asked Ms. Davis if this is what your understanding was. Ms. Davis stated yes. Commissioner Dresser asked for a motion to accept the proposal of Mr. Jackson. Commissioner McFarland made a motion to accept the proposed violation penalty for Janet Davis as described by Mr. Jackson. Commissioner Reed seconded. Commissioner Dresser asked for a vote. Vote 3-0.

4. Attorney Guay was the hearing officer regarding complaint number 2014 MSHRC 0021 Mr. Joseph Douglas. Mr. Douglas was present for his hearing. Mr. Douglas is trainer of record of "Chanteuse Hanover". A blood sample from Chanteuse Hanover following the Second (2<sup>nd</sup>) Race on August 6, 2044 at Topsham Fair disclosed the presence of Caffeine, a Class II Drug. He asked the Commission members 2 questions and their response was "no" to both questions. He asked Mr. Jackson if there were any prehearing objections. Mr. Jackson stated no. Attorney Guay asked Mr. Douglas if he had any exhibits to introduce. Mr. Douglas had none. Attorney Guay asked Mr. Jackson if he had any exhibits. Mr. Jackson introduced the following exhibits. Exhibit 1, Program at Topsham Fair on August 6; Exhibit 2, Tag of Sample; Exhibit 3, Test Results from LGC; Exhibit 4, Notice of Positive Test; Exhibit 5, Copy of the referee analysis and Exhibit 6, Notice of Hearing. Attorney Guay admitted the six exhibits into the record without objection. He also gave the oath to Mr. Douglas. Testimony was heard from Mr. Douglas. Attorney Guay asked if the Commissioners had any questions. Commissioner McFarland asked Mr. Douglas where this horse was stabled. Mr. Douglas stated that it was stabled at his father's house in Bowdoin. Attorney Guay asked if there were any other questions from the Commissioners. There were none. He stated that Mr. Douglas rest his case and the State rest. Mr. Jackson asked that in the notice of hearing if the Commission would disregard item numbers 4, 5, and 6 in the complaint. Attorney Guay stated that that motion is accepted. Commissioner Dresser asked Attorney Guay to explain that to Mr. Douglas. Attorney Guay stated that when the Commission deliberates they would be looking at item numbers 2, 3, 7 and 8. He asked Mr. Jackson if the Commission finds a violation if he had a recommendation for the penalty. Mr. Jackson stated yes. He would recommend \$750 fine, 6 months suspension of all his licenses with all but 2 months being suspended and the horse suspended for 30 days with the suspension being set aside. This is his first offense. Attorney Guay closed the hearing. Commissioner Reed stated that he would accept the suggestion of staff. Commissioner McFarland stated that he would concur with Commissioner Reed. Commissioner Dresser asked for a motion. Commissioner Reed stated that they would suspend all of Mr. Douglas' license for 60 days, with a \$750.00 fine, the return of the purse and the horse suspended for 30 days with the suspension suspended with a finding that a violation has occurred. Commissioner McFarland seconded. Commissioner Dresser asked for the vote. Vote 3-0.
5. Commissioner Dresser stated that they would take public testimony of proposed rule changes to MSHRC Rule Chapter 11. Mr. Jackson presented the proposed changes for the record. Written testimony will be accepted until 5 PM on February 9, 2015.
6. Commissioner Dresser stated that they would take public testimony of proposed rule changes to MSHRC Rule Chapter 17. Mr. Jackson presented the proposed changes for the record. Written testimony will be accepted until 5 PM on February 9, 2015.

#### UNFINISHED BUSINESS:

Commissioner Dresser stated that they need to add two items to the agenda. One is the review and approval of the Decision and Order regarding Philip Sowers, Jr. and the Decision and Order regarding Dana Childs. Commissioner Dresser asked for a motion to adopt as written. Commissioner McFarland made a motion to adopt the findings of Philip Sowers, Jr. Decision and Order complaint number MSHRC 0020. Commissioner Reed seconded. Commissioner Dresser asked for the vote. Vote 3-0.

Commissioner McFarland made a motion to adopt the findings of the Decision and Order of Dana W. Childs complaint number 2014 MSHRC 0022. Commissioner Reed seconded. Commissioner Dresser asked for the vote. Vote 3-0.

#### NEW BUSINESS:

1. None.

#### REPORTS:

Mr. Jackson stated that the other special accounts in the Commission office have been reconciled and the distributions have been made. The balance in the Sire Stakes account at the end of December 31, 2014 was approximately \$148,000.00 of which \$140,000.00 will be redistributed to the point winners throughout the Sire Stakes races including the finals and the consolations. Letters were sent out to those who were to receive funds.

He also attended the Maine Association of Agricultural Fairs meetings. He also met with the directors of racing from the 9 agricultural fairs to see what can be done by the industry to help those fairs that are suffering losses conducting live races at those tracks.

#### OTHER BUSINESS:

1. None.

#### PUBLIC COMMENT:

Diann Perkins asked if they know when they might be able to move forward with the rulemaking on the money that they get from the Oxford Casino. Mr. Jackson stated that the language has been developed and he is waiting from the Governor's office for approval to move forward. Commissioner Dresser asked if it's possible for the rule to be retroactively for 2015. Mr. Jackson stated that it will be active for 2015 but there might not be any distributions from that account until January 2016.

Linwood Higgins asked regarding the testing program from Kentucky. Mr. Jackson stated that he has not sent a letter out at this point. He wanted to make sure the testing has been completed for 2014. He does have a letter that needs to be reviewed by the assistant commissioner before he can send it because it will become a legal document. He also talked with the lab director and he is aware of his concerns. The contract with LGC expires June 30, 2015. He will be sending out a RFP.

Commissioner Dresser stated that the Commission does have the authority to contract out for services with another lab. Mr. Jackson stated that he had a long discussion with Ms. Shorty and Mr. Panek about the contract, and they do have the authority if they are dissatisfied with the actions of the current laboratory to go to the second highest bidder because the lab that got the bid did not meet its obligations. Mr. Higgins asked if he has given any thought to testing for Cobalt. Mr. Jackson stated that they have.

Jason Gravel stated that his polling of the association was that they wanted the Commission to look at what other states are already doing. The other sentiment is they want the rules to be enforced and in place for these violators. They also would like to see some substitute trainer rule in place. They feel that the penalty should be twofold and also the trainer of record should be held accountable and secondly a minor penalty for the substitute trainer of the day that would also hold them liable as a

licensee. As far as the phone call or notifying the presiding judge the day ahead of time, they would like to see a sign in sheet that day to be checked by the presiding judge. That way there would be a written record. Commissioner Dresser stated that she talked to Mr. Malia and because he is not at the paddock; he's not aware who is in there or who is not he has a group of trainer's that call and say they are not going to be there and so and so is taking my place. There are a lot of trainer's that are not doing that. The officials and the participants should be reminded that that is not how it is. Mr. Jackson stated that they are going to have signage up that says if the trainer of record is not in the paddock the day the horse races the horse will be scratched and the trainer of record will be fined unless they have received permission as the rule allows. Commissioner Dresser stated that she thinks that will accomplish a lot. Mr. Jackson stated that he doesn't like to do that because the management is trying to do to get a full field of horses. The trainer knows what his or her responsibility is. Dr. Matzkin stated that they have people bringing the horses for Lasix for instance long before the trainer shows up. Mr. Jackson stated that the trainer is supposed to accompanying the horse into the paddock. Dr. Matzkin stated that they don't. Mr. Gravel stated that at the track they are supposed to be checking in the people and the tattoo on site. Dr. Matzkin stated that the freeze brand is checked. Commissioner McFarland stated that the people want the rules enforced. Mr. Sweeney stated that with different tracks racing at the same time it becomes more difficult for trainer's to be where there horses are. For example, Drew Campbell is driving at Topsham Fair in the afternoon and racing at Scarborough in the evening. There is no way he can be in the paddock when his horses come in. Commissioner Dresser stated for clarification nobody is suggesting that trainer can't race at one track and be at another. That's not what they are discussing. We have a rule that says the trainer has to get permission from the presiding judge if that trainer is not going to be present on race day. Attorney Guay stated that the rule says the trainer shall be present in the paddock until all of his or her horses have raced. He stated that the rule is confusing. The rule allows you to call the judge by notification and not permission and I'm not going to be there and identify to the presiding judge who will be responsible for the horse; and it's implied and provide necessary documentation to the paddock judge prior to the days racing program. Mr. Gravel stated that the Association agreed if the rule would be rewritten at some point in time the sign in sheet would suffice as opposed to the phone call. Commissioner Dresser stated personally, the responsibility should remain with the trainer. Mr. Jackson stated that the trainer knows when he declares that horse in, if he will be there or not. That's when that trainer notifies the presiding judge. Mr. Gravel stated that the Association also wanted to see as a penalty the horses set down and suspended. Commissioner Dresser stated that they are trying to manage a consistent format and it isn't practical 6 months down the road. Ms. Perkins stated that there should be a booklet or guidelines at the track for licensees to look at. Mr. Jackson stated that there is a provision in statute that for a \$10.00 fee the Commission will provide a copy of all the rules.

#### EXECUTIVE SESSION:

None.

The meeting adjourned at 12:50 p.m.

Respectfully submitted by:

Henry W. Jackson

Executive Director